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ATTORNEY DOCKET NO FIRST NAMED INVENTOR FILING DATE APPLICATION NO. 303.522US1 REINBERG 08/25/99 09/382,442 **EXAMINER** MMC2/0221 021186 BOOTH.R SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH PAPER NUMBER **ART UNIT** P.O. BOX 2938 MINNEAPOLIS MN 55402 2812

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

02/21/01

Office Action Summary Examiner Richard A. Booth The MAILING DATE of this communication appears on the cover sheet with the correspondence address Priod for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed - Extensions of time may be available under the provisions of 30 days, a reply within the statutory minimum of thirty (30) days will be considered timely. If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication to become ABANDONED (35 U.S.C. § 133). Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).			Application No.	Ì		
Richard A Booth 2812	4					
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Application/Control Number: 09/382,442

Art Unit: 2812

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-14, 26-32, and 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lisenker et al., WO 94/19829.

The rejection is maintained as stated in paper #6 mailed 2-9-01 for the reasons of record.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lisenker et al. as applied to claims 1-14, 26-32, and 35-38 above, and further in view of Aomori et al., U.S. Patent 5,504,020.

The rejection is maintained as stated in paper #6 mailed 2-9-01 for the reasons of record.

Response to Arguments

Applicant's arguments filed 2-9-01 have been fully considered but they are not persuasive. Applicant argues that a nonvolatile memory cell is not shown in the Lisenker et al. reference. However, the examiner freely admits that this is so but states that the reference still provides a case of obviousness because a nonvolatile memory cell as described in applicant's claims is a field effect structure which is clearly

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described in the reference. Regarding the limitations to the claims which identify particular benefits of using the process in a memory cell, these limitations are added to the preamble which are not given patentable weight in the claims unless specifically referred to in the body of the claims. Furthermore, in response to applicant's argument that the reason to use the deuterium based process in the memory cell of applicant and a conventional transistor structure in the reference are not the same, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A. Booth whose telephone number is 308-3446. The examiner can normally be reached on Monday to Thursday from 7:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Niebling can be reached on 308-3325. The fax phone numbers for the organization where this application or proceeding is assigned are 308-7724 for regular communications and 308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1782.

Richard A. Booth Art Unit 2812